

Facts:

On Date 2, Parent, on behalf of Taxpayer, executed and filed with the IRS National Office a Form 3115 to change its method of accounting to re-characterize certain securities as equity, rather than debt, and to reverse the previously-amortized related premium on such securities. At the time the Form 3115 was submitted, Taxpayer was a party to two pending refund suits before the federal courts. Pursuant to section 6.03 of Rev. Proc. 97-27, Taxpayer should have sent duplicate copies of the Form 3115 to both sets of government counsel. On Date 3, Taxpayer sent a copy of the Form 3115 to its legal counsel representing it in one of the refund suits (Counsel 1). Counsel 1 sent a copy of the Form 3115 to the government counsel for that refund suit and to a second legal counsel representing Taxpayer in the second refund suit (Counsel 2). Taxpayer believed that Counsel 2 would forward a copy of the Form 3115 to the government counsel for the second refund suit. On Date 4, Counsel 2 discovered that he failed to forward a copy of the Form 3115 to the government counsel in the second refund suit and sent a copy of the Form 3115 to the government counsel. Upon learning that the duplicate copy was provided to one set of government counsel on Date 3 and the other set of counsel on Date 4, Taxpayer submitted this request for relief under sections 301.9100-1 and 301.9100-3.¹

Law and Analysis:

Rev. Proc. 97-27 sets forth the general procedures for obtaining the advance consent of the IRS to change a method of accounting. A taxpayer otherwise within the scope of Rev. Proc. 97-27 that is before a federal court with respect to any income tax issue may request a change in method of accounting. Section 6.03 of Rev. Proc. 97-27 requires such taxpayer to provide a copy of the IRS Form 3115 to counsel for the government no later than the date the taxpayer files the original IRS Form 3115 with the IRS National Office.

Under section 301.9100-1(c), the Commissioner has discretion to grant a reasonable extension of time under the rules set forth in sections 301.9100-2 and 301.9100-3 to make a regulatory election. Section 301.9100-1(b) defines a regulatory election as an election whose due date is prescribed by a regulation published in the Federal Register, or a revenue ruling, revenue procedure, notice, or announcement published in the Internal Revenue Bulletin.

Section 301.9100-1 through 301.9100-3 provide the standards the Commissioner will use to determine whether to grant an extension of time to make an election. Section

¹ The government counsel in the second refund suit who received the duplicate copy of the Form 3115 on Date 4 has been informed about this private letter ruling requesting 9100 relief and has no objections to its issuance.

301.9100-3 provides extensions of time for making regulatory elections that do not meet the requirements for an automatic extension under section 301.9100-2.

Section 301.9100-3(a) provides that requests for relief under section 301.9100-3 will be granted when the taxpayer provides evidence to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and that granting relief will not prejudice the interests of the government.

Conclusion:

Based solely on the facts and representations submitted, we conclude that the requirements of section 301.9100-3 have been satisfied. Accordingly, Taxpayer is granted an extension of time to provide the additional copy of the Form 3115 to government counsel. Because such additional copy was provided on Date 3 and Date 4, Taxpayer has satisfied the requirements of section 6.03 of Rev. Proc. 97-27 with respect to its Form 3115 filed on Date 2.

The ruling contained in this letter is based upon information and representations submitted by Taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the materials submitted in support of the request for rulings, such material is subject to verification on examination.

Except as expressly set forth above, we express no opinion concerning the tax consequences of the facts described above under any other provision of the Code. Specifically, we express no opinion as to whether Taxpayer qualifies to make its change in accounting method under the provisions of Rev. Proc. 2011-14. Nor do we express any opinion as to whether Taxpayer has changed to an appropriate method of accounting.

This ruling is directed only to the Taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representatives.

Sincerely,

Andrea M. Hoffenson
Assistant to the Branch Chief, Branch 1
Office of Associate Chief Counsel
(Financial Institutions and Products)

Enclosures:

Copy of this letter
Copy for section 6110 purposes

cc: